

Wisconsin Department of Transportation

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April 23, 2009

225033

The Honorable Francis P. Mulvey
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

FILED FEE WAIVED

Re: STB Docket No. AB-33 (Sub no. 268X) Union Pacific Railroad Company –
Abandonment Exemption – in Milwaukee County, WI – Petition for Notice of Interim
Trail Use.

Dear Mr. Mulvey:

Enclosed for filing are the original and ten (10) copies of the Wisconsin Department of
Transportation's Notice of Interim Trail Use filed on behalf of Milwaukee County Wisconsin.

Please date stamp and return the duplicate copy of this transmittal letter in the prepaid, return
mail envelope for verification of receipt.

Sincerely,

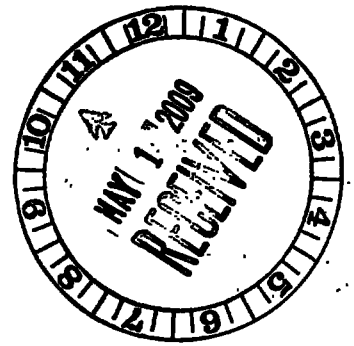
Kathleen Chung
Attorney

Enclosures

Cc: Vicki Schaefer, WisDOT
Bill Waldron, Milwaukee County
Mack Shumate, Union Pacific Railroad

FILED FEE WAIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD



AB-33 (SUB-NO. 268X)

UNION PACIFIC RAILROAD COMPANY –
ABANDONMENT EXEMPTION
IN MILWAUKEE COUNTY, WISCONSIN

225033

**COUNTY OF MILWAUKEE WISCONSIN (CMW)
PETITION FOR NOTICE OF INTERIM TRAIL USE**

BACKGROUND

Union Pacific Railroad Company, ("UP") filed with the Surface Transportation Board (Board) a Notice of Exemption under 49 C.F.R. 1152, Subpart F – Exempt Abandonments to abandon a 3.08 -mile line of railroad; the Capitol Drive Industrial Lead from Milepost 92.21, the Shortline connection to the end of the Line at Milepost 89.13, south of Hampton Avenue in northeastern Milwaukee in Milwaukee County, WI. The line traverses through United States Postal Service Zip Codes 53209, 53211, and 53217.

On April 20, 2009, the County of Milwaukee Wisconsin (CMW) signed a Statement of Willingness to Accept Financial Responsibility pursuant to 49 C.F.R. § 1152.29. This statement is for the 3.08-mile segment of UP railroad, from milepost 92.21 to milepost 89.13, in Milwaukee, Milwaukee County, WI.

PURPOSE

Wisconsin Department of Transportation (WisDOT) petitions to obtain a notice of interim trail use for interim highway, bicycle, pedestrian and other trail purposes and railbanking pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 for CMW for specified segments of the right of way involved in this proceeding. CMW will use or preserve the land corridor and related real property

for interim public transportation and recreational purposes (including highway, pedestrian and other trail), subject to restoration for railroad purposes. WisDOT and CMW have agreed to work cooperatively to acquire and use the right of way.

STATE AND COUNTY RESPONSIBILITIES

WisDOT is the designated state agency in rail matters in the State of Wisconsin. 49 U.S.C. Appx. § 1654(a) (formerly § 1654(j)), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats. WisDOT is responsible for all state and federally-aided highway construction and all state and federally-aided airport construction in Wisconsin. Secs. 84.01(2) and 114.32(1) and (5), Wis. Stats. WisDOT has the statutory first right to acquire for present or future transportation, recreational or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin. Sec. 85.09(2), Wis. Stats.

WisDOT has state statutory authority to incorporate trails into the highway right-of-way in sec. 84.06(11); Wis. Stats.

"(11) State Trails. As a part of any highway improvement or as a separate project under this section, a portion of a hiking trail, cross-country ski trail, bridle trail or bicycle trail under the management of a state agency, municipality or nonprofit may be incorporated into the highway right-of-way, and facilities for safe crossing of the highway may be provided."

CMW and WisDOT need the interim trail use designation to fulfill federal and state transportation and environmental responsibilities.

NOTICE OF INTERIM TRAIL USE

WisDOT respectfully requests that the Board provide CMW a notice of interim bicycle, pedestrian and other trail use and rail banking condition to accomplish the above public purposes. WisDOT is interested in having CMW acquire and use the right of way of the rail line being abandoned for interim bicycle, pedestrian or other trail use and rail banking.

Exhibit 1 consists of a map showing the location of all the needed property in Milwaukee County, Wisconsin.

Exhibit 2 is the required Statement of Willingness by CMW to assume full responsibility for management of the property.

CMW's acquisition of the corridor for present and future transportation purposes as stated above is consistent with all Congressional purposes and neither abandonment nor discontinuance permitted by the STB conditioned as requested by CMW would be inconsistent with or disruptive of potential future rail use.

CONCLUSION

WisDOT respectfully requests the Board to issue a Notice of Interim Trail Use for the land corridor and related real property, for the 3.08-mile segment of UP railroad, from milepost 92.21 to milepost 89.13, in Milwaukee, Milwaukee County, Wisconsin to CMW. This will allow all forms of transportation to be provided in a unified, interconnected, economically-efficient, and environmentally sound manner.

Respectfully submitted,



Kathleen Chung, State Bar No. 1032802
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115-B
P. O. Box 7910
Madison, WI 53707-7910
(608) 266-8752
Attorney for Wisconsin Department of Transportation

BEFORE THE SURFACE TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY
ABANDONMENT EXEMPTION IN MILWAUKEE COUNTY

STATEMENT OF WILLINGNESS TO ACCEPT RESPONSIBILITY BY
THE COUNTY OF MILWAUKEE, WISCONSIN
PURSUANT TO 49 CFR 1152.29

In order to establish interim trail use and rail banking under 16 USC 1247 (d) and 49 CFR 1152.29, the County of Milwaukee (County), Wisconsin, is willing to assume full responsibility for management of, for any legal liability arising out of the transfer of the right-of-way to Milwaukee County, and indemnifies the Union Pacific Railroad Company against any potential liability for future Milwaukee County acts or omissions, and for the payment of any and all taxes that may be lawfully levied or assessed against the right-of-way owned and operated by the Union Pacific Railroad Company. The right-of-way segment for which the County is making this Statement of Willingness is the following portion of rail line:

The Capitol Drive Industrial Lead from milepost 92.21 the Shoreline Connection to the end of the Line at milepost 89.13 south of Hampton Avenue, a distance of 3.08 miles in Milwaukee County, Wisconsin.

A map of the property depicting the right-of-way is attached as EXHIBIT A.

Milwaukee County acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad, Union Pacific Railroad Company, on the same date it is being served on the Surface Transportation Board.

COUNTY OF MILWAUKEE, WISCONSIN

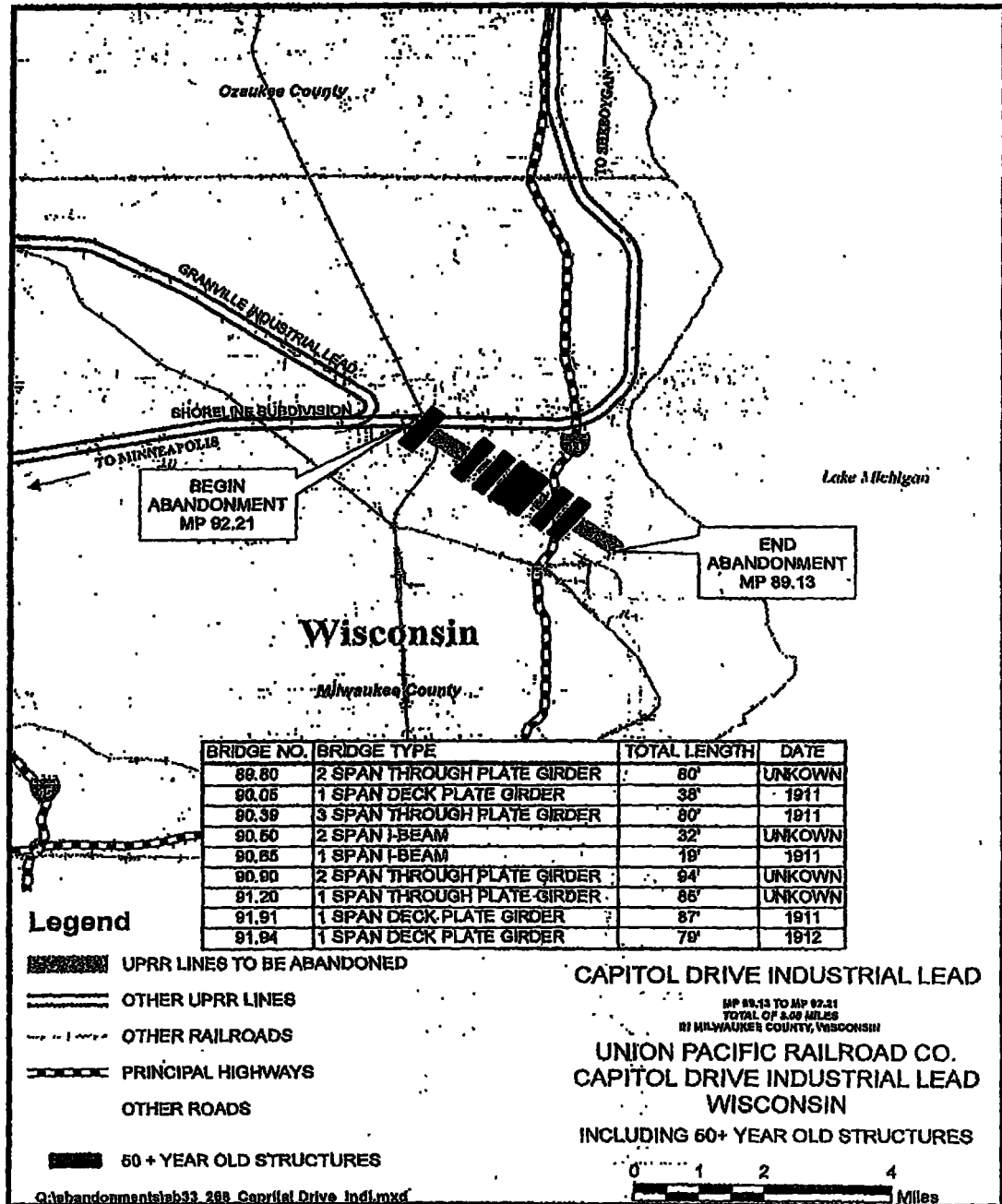
Represented By: _____

Sue Black
Director, Milwaukee County Department of Parks, Recreation & Culture

Date: _____

April 20, 2009

EXHIBIT A





Milwaukee County
Department of Parks, Recreation and Culture
Scott Walker, County Executive • Sue Black, Director

April 20, 2009

Vicki Schaefer
4802 Sheboygan Ave, Rm. 701
Madison, WI 53702

Dear Ms. Schaefer:

Enclosed is Milwaukee County's Statement of Willingness for the Union Pacific Railroad Company abandonment exemption in Milwaukee County. An electronic version of this document has also been sent to yourself and Kathleen Chung, per your instructions. If you have any questions pertaining to this matter, please don't hesitate to contact either my supervisor, Mr. James Keegan, or myself. Jim can be reached at (414) 257-4775, and my phone number is (414) 257-4505.

Thanks for your help.

Sincerely,

Bill Waldron

Enclosure